

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 West Jackson Boulevard
Chicago, IL, 60604

IN THE MATTER OF:)	ADMINISTRATIVE ORDER ON CONSENT
)	
REM Electric Inc.)	
58-acre vacant property north of:)	RCRA Docket No.:
2100 Tin Plate Place)	
Yorkville, OH 43971)	PROCEEDING UNDER SECTION
)	3013(a) OF THE RESOURCE
EPA ID No. OHD 082 964 313)	CONSERVATION AND RECOVERY
)	ACT, 42 U.S.C. § 6934(a)
Respondent.)	
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I. JURISDICTION

1. This Administrative Order on Consent (Consent Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA or Agency) by Section 3013(a) of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6934(a) (RCRA or the Act). Complainant is the Director of the Land and Chemicals Division, EPA Region 5 ("Division Director"). The authority to enter into this Consent Order has been duly delegated to the Division Director.

2. This Consent Order is issued to REM Electric, Inc. ("REM" or "Respondent"), a corporation organized under the laws of the state of Nebraska and having a principal place of business at 716 South 6th Street, Nebraska City, Nebraska. Respondent consents to and agrees not to contest EPA's authority to issue this Consent Order and enforce its terms. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review it may have under Chapter 7 of the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and 40 C.F.R. Part 24, providing for judicial review of final agency action. Further, Respondent will not contest EPA's authority to: compel compliance with this Consent Order in any subsequent enforcement proceedings; require respondent's full compliance with the terms of this Consent Order; or impose sanctions for violations of this Consent Order; provided, however, that Respondent retains any and all rights it may have to dispute the merits of any such claims.

3. This Consent Order is based upon the administrative record compiled by EPA and incorporated herein by reference. The record is available for review by REM and the public at EPA's regional office at 77 West Jackson Boulevard, Chicago, IL 60604.

II. DEFINITIONS

4. This Consent Order incorporates the definitions in RCRA, 42 U.S.C. §§ 6901 – 6922k, and the regulations promulgated under RCRA unless otherwise specified.

III. PARTIES BOUND

5. The provisions of this Consent Order shall apply to and be binding upon Respondent and its officers, directors, employees, agents, contractors, successors, and assigns.

6. No change in ownership, corporate, or partnership status relating to the facility described in this Consent Order will in any way alter Respondent's status or responsibility under this Consent Order. Any conveyance by Respondent of title, easement, or other interest in the facility described herein, or a portion of such interest, shall not affect Respondent's obligations under this Consent Order. Respondent shall be responsible for and liable for any failure to carry out all activities required of Respondent by this Consent Order, irrespective of its use of employees, agents, contractors, or consultants to perform any such tasks.

7. Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories, and consultants retained to conduct or monitor any portion of the work performed pursuant to this Consent Order within seven (7) calendar days of the effective date of this Consent Order, or on the date of such retention, and Respondent shall condition all such contracts on compliance with this Consent Order.

8. Any documents transferring ownership and/or operations of the facility described herein from Respondent to a successor-in-interest shall include written notice of this Consent Order. In addition, Respondent shall, no less than thirty (30) days prior to transfer of ownership or operation of the facility, provide written notice of this Consent Order to its successor-in-interest, and written notice of said transfer of ownership and/or operation to EPA.

IV. STATEMENT OF PURPOSE

9. In entering into this Order, the mutual objectives of EPA and Respondent are the protection of human health and the environment through Respondent's implementation of sampling, analysis, monitoring and reporting at the facility. In meeting these objectives, Respondent shall perform sampling, analysis, and monitoring under approved workplans to fully determine the nature and extent of the presence and/or release of hazardous wastes at or from the facility.

V. FINDINGS OF FACT

10. Respondent owns a 58.43-acre plot of land (the "facility") located along Old State Highway 7 in Yorkville, Belmont County, Ohio identified as parcel number 25-00239.000 by the Belmont County Geographic Information System. The facility is bounded on the east by the Ohio River and River Rd; on the north by residential properties along Belmont Avenue, 3rd and 4th Streets followed by Public Road and the Ohio Cold Rolling Company; on the west by railroad tracks followed by residential properties along Market Street; and on the south by Deep Run Road followed by the Ohio Coatings Company.

11. Between 1917 and 1923, the former Wheeling Steel and Iron Company acquired the facility and neighboring parcels along the Ohio River, and later transferred them to Wheeling Steel Corporation. The Wheeling-Pittsburgh Steel Company (WPSC), now known as RG Steel

Wheeling, LLC, owned and operated the facility and the neighboring parcels until November 14, 2012, when REM Realty LLC purchased the facility.

12. During WPSC's tenure as owner and operator, it used the facility for frequent, unapproved dumping of materials from its operations on an adjacent area just north of the facility. Discarded materials include old tanks, tank housings, and bricks from a former pickling line at the nearby WPSC plant. An estimated 100 open and/or leaking unlabeled drums containing waste paints with spilled residue on the ground were observed during an Ohio EPA inspection on March 31, 1981. The drums were reportedly removed from their undocumented location and moved to an unapproved dumpsite on the facility. The drums were placed in two rows, punctured, and set on fire during a training exercise by the Yorkville Volunteer Fire Department. A former WPSC employee stated that burning of drums containing mostly paint wastes and solvents in trenches on the facility was a common practice in the period from 1969 to 1982 or 1983. A May 10, 1982, Ohio Environmental Protection Agency (OEPA) letter to WPSC contains information on the dumping of waste oil on the facility's dirt access roads as a means for dust control. More recently, the facility has been an area of frequent trespassing and unapproved dumping of household goods, construction, and industrial debris. Given the unknown timeframe of illegal dumping and the materials being discarded, it is possible that asbestos containing material will be found on the facility.

13. No geologic or hydrogeologic information exists from data collected on the facility. Deep Run Creek flows across the southern portion of the facility and discharges into the Ohio River on the east side of River Road. According to the Groundwater Resources Map of Belmont County (Walker, 1991), the facility overlies 60-85 feet of glacial outwash characterized by sand and gravel, which is hydraulically connected to the Ohio River. Given that facility elevations range from 652-671 feet mean sea level (msl) and the Ohio River averages an elevation of 645 feet msl, groundwater is likely at 7-16 feet depth below ground surface, flowing toward the Ohio River with a slightly southern component, although hydraulic characteristics of the water table may fluctuate in time and space. A potential exists for on-site contaminants to migrate into the aquifer and subsequently the Ohio River.

Inspections, Investigations, Studies, and Evaluations

- **2008 Preliminary Assessment/Visual Site Inspection**

14. On July 17, 2008, EPA's contractor Booz Allen Hamilton submitted a Preliminary Assessment/Visual Site Inspection report to EPA. During their field visit, the team observed: debris or items resembling burned drums; bricks and other rubble; large, rusted dumpsters; large-diameter pipes; brick-lined, rusted tanks; and miscellaneous household trash. One of the old tanks contained sludge that was dark in color and had an odor similar to oil. The report also noted a helicopter flyover OEPA conducted on April 7, 2008, that identified an area that may have been a drum burn site.

- **2014 Phase 1 Environmental Site Assessment**

15. In July 2014, Hull & Associates, Inc., a privately-retained contractor, submitted a Phase 1 Environmental Site Assessment that included, in part, a description of the facility during a site reconnaissance. Their observations include areas where land has been graded or filled and numerous scattered debris piles. These debris piles are classified into two categories: construction and industrial demolition debris, and household and yard waste. The former was present in the southern and central portions of the facility, along the entire length of the north-south access road, and along the southern and eastern hillside. The debris included slag, brick, concrete, tires, asphalt, asphalt roofing, railroad ties, various sizes and types of piping, steel, drum remnants containing ash-like material, steel structures, possible asbestos-containing material, large fiberglass and metal structures, and sand blasting sand. The latter debris piles were found in the northwest portion of the facility and included bedding, furniture, clothing, tires, and yard waste.

- **2016 RCRA site visit**

16. On April 1, 2016, Hull & Associates, Inc. submitted a Letter Report that included results from a non-invasive electromagnetic (EM) geophysical survey of the burn area identified by the former WPSC employee, and a debris mapping survey conducted between March 7 and March 15, 2016. Results from the EM survey indicated one strong metal response, potentially in response to a concentration of metallic objects or debris, such as metal barrels, which may be buried several feet below ground surface. Other elevated responses from the survey may be indicative of isolated metal debris near the ground surface. The debris mapping survey identified areas where significant debris was observed. Debris found on-site includes brick and concrete construction debris, scattered equipment, railroad ties, drums, drum remnants, drums containing ash-like material and a hardened black substance with a petroleum odor, piping, mixing tanks, slag, and miscellaneous metal debris.

17. The following are effects on human health or the environment that may be caused by the constituents commonly associated with pickling line waste (spent pickle liquor), paint wastes and solvents, and used oil:

- a. **Lead:** Lead is a probable teratogen in humans. The primary routes of exposure are through inhalation and ingestion. Chronic health effects include decreased fertility in male and females; kidney and brain damage. Chronic lead exposure causes nerve and behavioral effects in humans and could cause similar effects in birds and animals. Water hardness controls the toxicity of lead to aquatic life, the softer the water the greater the toxicity. It has a high chronic toxicity to aquatic life.
- b. **Arsenic:** Arsenic is a known carcinogen, and a potential teratogenic agent. Its main path of exposure to humans is through inhalation and dermal absorption.

Long-term exposure can cause nerve and liver damage, narrowing of the blood vessels, and affect red blood cell production. Arsenic in the presence of acid may release a deadly gas, arsine. Arsenic has high acute toxicity to aquatic life, birds and land animals. It has a low solubility in water and is persistent in water, with a half-life of 200 days. Arsenic has high chronic toxicity to aquatic life, and is known to bioaccumulate in fish tissues.

- c. Chromium: Acute exposure to chromium dust can cause “metal fume fever” in humans, which results in fevers, chills, and muscle aches. Chromium is highly persistent in water and has a half-life of greater than 200 days. Hexavalent chromium is soluble and more mobile in groundwater than trivalent chromium. Hexavalent chromium has a high acute and chronic toxicity to aquatic life.
- d. Nickel: Nickel is a probable human carcinogen and may damage the developing fetus. High exposure through inhalation can lead to pulmonary edema and death. It can cause damage to the lungs, heart, liver and/or kidney. Nickel and its compounds have a high acute and chronic toxicity to aquatic life.
- e. Zinc: Zinc’s path of exposure is through inhalation and ingestion. The most important exposure at waste sites is through ingestion of zinc contaminated water. Acute exposure to inhaling zinc fumes can result in metal fume fever. Chronic exposure can lead to stomach cramps, nausea, and decreased HDL cholesterol in the blood. Acute toxic effects may include death of animals, birds, or fish. Zinc has acute toxicity to aquatic life, the softer the water the greater the toxicity. It also has a high chronic toxicity to aquatic life.
- f. Methyl ethyl ketone (MEK): MEK may retard fetal development and is a possible teratogen. At high doses, it can damage the nervous system. MEK is used as a solvent.
- g. Acetone: Dermal absorption and inhalation are the main routes of exposure of acetone. High acute exposure can cause dizziness and cause loss of consciousness. High chronic exposure may damage the liver and kidneys. Acetone has a slight chronic and acute toxicity to aquatic life. Acetone is used as a solvent.
- h. Benzene: Benzene is a possible component of oil and grease. It is a carcinogen in humans and possibly a teratogen. Acute exposures can cause dizziness, convulsions, irregular heartbeat and even death. Chronic exposures can cause aplastic anemia, which can cause death. Benzene has high acute toxicity to aquatic life. Chronic exposures in the environment cause shortened life spans, reproductive problems, and lower fertility. Benzene is a component of oil and is used as a solvent.

- i. Bis (2-ethylhexyl) phthalate: Bis(2-ethylhexyl) phthalate is a carcinogen and a teratogen and may damage the testes. Repeated exposure may affect the kidneys and liver.
- j. Toluene: The main concern in chronic exposures is possible mutations in living cells, possible damage to a developing fetus, and liver damage. Toluene has caused leaf membrane damage in plants. It may accumulate in fish tissues. Toluene is a component of oil and is also used as a solvent.
- k. Ethylbenzene: Very high acute exposures can cause trouble breathing, paralysis and death. There is some evidence to suggest ethyl benzene may damage a developing fetus. High chronic exposure may cause liver damage. Ethyl benzene has a high chronic and acute toxicity to aquatic life. Ethyl benzene is a component of oil and is sometimes used as a solvent.
- l. Xylenes: Acute exposure to xylenes can cause nausea and lightheadedness. Xylenes may damage the developing fetus. Chronic effects also include bone marrow damage, low blood cell count, liver damage, and kidney damage. Xylene is moderately soluble in water, and its chronic toxic ecological effects may include shortened lifespan, reproductive problems, and lower fertility. Xylenes are components of oil and are also used as a solvent.
- m. Naphthalene: Very high levels of naphthalene can cause hemolytic anemia and damage the kidneys, liver and eyes. Naphthalene has moderate acute and chronic toxicity to aquatic life.
- n. Tetrachloroethene: The route of exposure is absorption and inhalation. Acute health effects include liver and kidney damage, enough to cause death. It may be a carcinogen in humans, since it caused liver cancer in animals. It also may damage the developing fetus. Chronic exposure to tetrachloroethylene may damage the liver and kidneys. It is heavier than water and is moderately soluble in water. It has moderate acute and chronic toxicity to aquatic life. Tetrachloroethylene is a solvent.
- o. Trichloroethene: Acute exposures at high levels can cause pulmonary edema, irregular heartbeat, and unconsciousness. It may be a carcinogen in humans. It has been shown to cause cancer in animals. There is some evidence that shows trichloroethylene is a teratogen in humans. Long term exposure can cause liver and kidney damage. Acute toxic ecological effects may include the death of animals, birds, or fish, and a low growth rate in plants. Trichloroethylene is used as a solvent.

- p. Cis-1,2-dichloroethene: Cis-1,2-Dichloroethane is carcinogenic in animals and mutagenic in bacterial test systems; it is a suspected human carcinogen. It can cause liver and kidney damage. Inhalation can cause shortness of breath, pulmonary edema, loss of consciousness, and death. It has a slight acute toxicity to aquatic life. It is a man-made liquid not found naturally in the environment and is used to make, among other things, solvents that remove grease, glue, and dirt, including trichloroethane, trichloroethylene, perchloroethylene, vinylidene chloride, and ethyleneamines. It is also found in commercial solvents used, among other things, to remove grease from metal.
- q. Vinyl chloride: Vinyl chloride is a known human carcinogen. Exposure routes are through inhalation, ingestion, or dermal contact. Acute exposures can result in dizziness, nausea, headache, and/or ataxia. Chronic exposure can cause respiratory failure, hepatotoxicity, brain and lung tumors, malignant haematopoietic or lymphatic tumors, and birth defects or spontaneous abortion of fetuses.
- r. PAHs, polycyclic aromatic hydrocarbons: PAHs are a group of over 100 different chemicals that are present in the heavy fraction of petroleum distillate and produced from the incomplete burning of coal, oil and other organic substances. Acenaphthene can cause liver and kidney damage at high levels. Benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(a)pyrene, dibenzo(a,h)anthracene and indeno(1,2,3-c,d)pyrene and others are human carcinogens. Carbazole and chrysene are possible human carcinogens. In addition, laboratory mice ingesting benzo(a)pyrene developed birth defects. Acenaphthylene, benzo(a)anthracene, benzo(k)fluoranthene, and phenanthrene may be mutagenic. Carbazole is capable of causing death or permanent injury due to exposures of normal use. It can be incapacitating and poisonous and requires special handling. PAHs tend to combine with dust and are carried into water, soil and crops. PAHs are often associated with petroleum, coal and coke.
- s. Polychlorinated Biphenyls (PCBs): Arochlor 1254 is a chlorobiphenyl, one of the primary chemicals in PCBs, named according to the percentage of chlorine in the mixture (54%). Others include arochlor 1242, 1248, and 1260. The main path of exposure to humans is through inhalation and dermal absorption. Acute exposure to PCBs can damage the liver. Chronic exposures pose cancer risks, possible liver damage, and damage to the nervous system. Acute toxic effects in the environment may include death of animals, birds, or fish. They have high chronic toxicity to aquatic life, and have been known to bioaccumulate in fish.

VI. DETERMINATIONS AND CONCLUSIONS OF LAW

18. REM's facility is a "facility or site" within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

19. REM is a “person” as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

20. REM is an “owner” and “operator” of the facility within the meaning of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a).

21. Section 1004(27) of RCRA, 42 U.S.C. § 6905(27) defines the term “solid waste” to mean “any garbage, refuse . . . and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations . . .”

22. Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), defines the term “hazardous waste” to mean:

a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may-

(A) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

23. Section 1004(3) of RCRA, 42 U.S.C. § 6903(3), defines the term “disposal” to mean “the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.”

24. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA determines that hazardous wastes within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), are present, and have been treated, stored or disposed of, at the facility.

25. Based on the foregoing Findings of Fact, and pursuant to Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), EPA determines that the presence of hazardous wastes at the facility and/or the release of hazardous wastes from the facility may present a substantial hazard to human health or the environment.

26. EPA further determines that Respondent, as owner and operator of the facility, is the party responsible for conducting the actions required in this Consent Order, which are necessary to ascertain the nature and extent of the hazard to human health or the environment.

VII. ORDER

27. Pursuant of Section 3013(a) of RCRA, 42 U.S.C. § 6934(a), Respondent consents to and is hereby ordered to perform the following actions in the manner and by the dates specified herein. All work undertaken pursuant to this Order shall be performed in a manner consistent with *Interim Final RCRA Facility Investigation (RFI) Guidance*, Volumes I-IV, EPA/530/SW-89-031, May 1989, and all other applicable EPA guidance.

- A. Respondent shall create and maintain a project lifecycle Conceptual Site Model (CSM) in accordance with EPA's systematic planning process (*Environmental Cleanup Best Management Practices: Effective Use of the Project Life Cycle Conceptual Site Model*, EPA 2011). The CSM shall be updated regularly to reflect additional data collection, or quarterly, whichever comes first. The CSM shall include a data management and visualization plan. It shall be submitted to EPA by September 1, 2016.
- B. A site-wide soil screening, sampling, and analysis workplan in accordance with EPA's Data Quality Objectives Process to determine the nature and extent of any soil contamination shall be submitted to EPA by September 1, 2016 (*Guidance for the Data Quality Objectives Process*; U.S. EPA, 1994).

The workplan shall include an initial site-wide, high resolution screening investigation utilizing real-time field screening technologies designed to qualitatively detect polycyclic aromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs). This initial screening step shall also include characterization of site stratigraphy. The areas of investigation shall include, but may not be limited to, locations of encountered and mapped debris or potentially buried drums and debris described in the April 1, 2016 Letter Report submitted to EPA by Hull & Associates, Inc., as well as all areas of potentially complete exposure pathways. The exact locations, vertical extent, and density of screening data per decision unit shall be approved by EPA through the systematic planning process.

A site-wide soil sampling investigation shall follow, informed by the screening investigation described above. The exact locations, vertical extent, and density of sampling data per decision unit shall be approved by EPA through the systematic planning process. The soil sampling design and procedures shall follow applicable guidance, including but not limited to: *Soil Screening Guidance*, EPA 1996, 2002; *Guidance on Choosing a Sampling Design for Environmental Data Collection*, EPA 2002; *Incremental Sampling Methodology*, ITRC 2012. Sample analysis must include

the full suite of parameters provided in 40 CFR 264 Appendix IX. Contaminants of concern found above EPA-approved screening criteria must be fully delineated. The workplan shall include a data management and visualization plan. The workplan, subject to approval, shall include a schedule of work

- C. A site-wide groundwater investigation workplan in accordance with EPA's High-Resolution Site Characterization (HRSC) initiative shall be submitted to EPA by September 1, 2016 (<https://clu-in.org/characterization/technologies/hrsc>). The workplan shall include a preliminary screening plan utilizing direct-push and advanced profiling technology, as approved by EPA. The groundwater investigation shall include, but may not be limited to, locations of encountered and mapped debris or potentially buried drums and debris described in the April 1, 2016 Letter Report submitted to EPA by Hull & Associates, as well as all areas of potentially complete exposure pathways. The workplan shall include a groundwater-to-surface water investigation for the stream located at the southern end of the property and any other water bodies on-site. The groundwater investigation must adhere to applicable guidance, including but not limited to: *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action*, EPA 2004; *Groundwater Road Map*, EPA 2011. Sample analysis must include the full suite of parameters provided in 40 CFR 264 Appendix IX. Contaminants of concern found above EPA-approved screening criteria must be fully delineated. The workplan shall include a data management and visualization plan. The workplan, subject to approval, shall include a schedule of work.
- D. Respondent shall submit a vapor intrusion investigation workplan if applicable contaminants discovered in soil or groundwater exceed EPA-approved screening criteria. The workplan must follow applicable guidance, including but not limited to: *Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air*, EPA 2015; *Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites*, EPA 2015.
- E. A surface water and sediment sampling workplan for the east-to-west flowing stream located at the southern end of the property shall be submitted to EPA by September 1, 2016. The exact locations, vertical extent, and density of sampling data per decision unit shall be approved by EPA through the systematic planning process. Sample analysis must include the full suite of parameters provided in 40 CFR 264 Appendix IX. The workplan, subject to approval, shall follow applicable guidance and include a schedule of work.
- F. All workplans shall identify EPA-approved risk screening criteria appropriate for current and potential future use scenarios. Respondent shall evaluate the releases for their potential to pose any unacceptable risk to human health and the environment and provide risk assessment documents to EPA 60 days after investigation. The risk

assessments shall adhere to applicable guidance, including but not limited to, *Risk Assessment Guidance for Superfund* and *Ecological Risk Assessment Guidance for Superfund*.

28. All sampling and analysis conducted under this Consent Order must be performed in accordance with RCRA and other applicable federal and state laws and their implementing regulations, and consistent with all relevant EPA guidance documents as appropriate for the site, and be sufficient to identify and characterize the nature and extent of any and all releases as required by this Consent Order. This guidance includes, but is not limited to, *EPA RCRA Facility Investigation, Region 5 RCRA Quality Assurance Project Plan Policy guidance* (April 1998), the *Documentation of Environmental Indicator Determination Guidance*, and EPA's risk assessment guidance.

29. EPA acknowledges that Respondent may have completed some of the tasks required by this Consent Order and/or that Respondent may have available some of the information and data required by this Consent Order. This previous work may be used to meet the requirements of this Consent Order, upon submission to and formal approval by EPA.

30. The written workplans and all reports or documents required to be submitted under this Consent Order shall be mailed to:

Conor Neal
Remediation and Reuse Branch
Land and Chemicals Division (LU-9J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

VIII. MINIMUM QUALIFICATIONS FOR PERSONNEL

31. All work Respondent performs pursuant to this Consent Order shall be under the direction and supervision of an individual who has demonstrated expertise in hazardous waste site investigation. Before any work is performed, Respondent shall submit to EPA, in writing, the name, title, and qualifications of the supervisory personnel and of any contractors or subcontractors to be used in carrying out this Consent Order. Additionally, Respondent shall ensure that when a license is required, only licensed individuals shall be used to perform any work this Consent Order requires.

IX. ADDITIONAL WORK

32. Based on work performed under the work plans described above, EPA may determine that additional investigation, analysis, and/or reporting is necessary to meet the purposes of this Consent Order. If EPA determines that Respondent shall perform additional

work, EPA will notify Respondent in writing and specify the basis for its determination that additional work is necessary. Within fifteen (15) days after the receipt of such determination, Respondent shall have the opportunity to meet or confer with EPA to discuss the additional work. If EPA requires, Respondent shall submit for EPA approval a work plan for the additional work. EPA will specify the contents of such work plan. Respondent shall submit such work plan within thirty (30) days of receipt of EPA's determination that additional work is necessary, or according to an alternative schedule EPA establishes.

X. SUBMISSIONS / AGENCY REVIEW

33. EPA will review Respondent's workplans, draft and final reports, and any other documents submitted pursuant to this Consent Order ("submissions"), with the exception of progress reports, and will notify Respondent in writing of EPA's approval or disapproval of each such submission. In the event of EPA's disapproval, EPA shall specify in writing any deficiencies in the submission. Such disapproval shall not be subject to the dispute resolution procedures of Section XIX., below.

34. Within thirty (30) calendar days of receipt of EPA's comments on the submission, Respondent shall submit to EPA for approval a revised submission which responds to any comments received and/or corrects any deficiencies EPA identifies. Respondent may request additional time within which to submit a revised submission. In the event that EPA disapproves the revised submission, Respondent may invoke the dispute resolution procedures of Section XIX., below. Otherwise, EPA reserves the right to revise such submission and seek to recover from Respondent the costs thereof, in accordance with any rights that it may have under RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

35. Upon disapproval by EPA of a revised submission, and in the event Respondent does not invoke the dispute resolution procedures of Section XIX., below, Respondent may submit to EPA for approval a subsequent revised submission which responds to any comments received and/or corrects any deficiencies identified by EPA. Respondent may request additional time within which to submit a subsequent revised submission.

36. In the event EPA and Respondent cannot resolve issues relating to EPA's comments and EPA disapproves of any subsequent revised submission, Respondent may invoke the dispute resolution procedures of Section XIX., below. Otherwise, EPA reserves the right to revise such submission and to seek to recover from Respondent the costs of revising the subsequent submission in accordance with RCRA, CERCLA and any other applicable law. Any submission approved or revised by EPA or upheld through dispute resolution under this Consent Order shall be deemed incorporated into and made an enforceable part of this Consent Order.

37. Beginning with the first day of the second full month following the effective date of this Consent Order, and every two months thereafter on the first day of the month, for the first six months that this Consent Order is effective, Respondent shall provide EPA with bimonthly progress reports which contain the information required in the relevant Scope(s) of Work attached hereto. Thereafter, throughout the period this Consent Order is effective, Respondent shall provide EPA with such reports on a quarterly basis.

38. Two (2) copies (one (1) original and one (1) copy) of all submissions (including revised submissions) required to be submitted by this Consent Order shall be hand-delivered or sent by an acceptable and reputable messenger service or by Overnight Mail, to the EPA Project Coordinator designated pursuant to Section XII., Project Coordinator, below. An electronic copy of all submissions shall accompany the hard copies, either by email or on a CD.

39. EPA shall endeavor to timely approve or disapprove any deliverable submitted by Respondent for approval pursuant to this Consent Order. Nothing in this paragraph shall be construed to confer any enforceable rights upon Respondent, nor shall any failure to comply with this paragraph be subject to the dispute resolution provisions set forth in Section XIX., below.

40. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required under this Consent Order shall be in writing and shall be sent as follows:

- a. All documents to be submitted to EPA shall be sent to:

Conor Neal
Remediation and Reuse Branch
Land and Chemicals Division (LU-9J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

- b. Documents to be submitted to Respondent shall be sent to:

Robert McEwen
REM Electric, Inc.
716 South 6th Street
Nebraska City, NE 68410

41. Any notice, report, certification, data presentation, or other document submitted by Respondent pursuant to this Consent Order which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent's compliance or noncompliance with any requirement of this Consent Order shall be certified by a duly authorized representative of Respondent. A person is a duly authorized representative only if: (a) the authorization is made

in writing; (b) the authorization specifies either an individual or position having responsibility for overall operation of the regulated facility or activity (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and (c) the written authorization is submitted to the Project Coordinator designated by EPA pursuant to Section XII., Project Coordinator, of this Consent Order.

42. The certification required by paragraph 41 above, shall be in the following form: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to be the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature : _____

Name: _____

Title: _____

XI. QUALITY ASSURANCE / QUALITY CONTROL

43. Respondent shall follow EPA guidance for sampling and analysis. Respondent shall develop a Quality Assurance Project Plan (QAPP) for all sampling and analysis conducted under this Consent Order in accordance with the requirements in the Region 5 Quality Assurance Project Plan Policy. Workplans shall contain quality assurance/quality control (QA/QC) and chain of custody procedures for all sampling, monitoring, and analytical activities. Any deviations from the QA/QC and chain of custody procedures in approved workplans must be approved by EPA prior to implementation; must be documented, including reasons for the deviations; and must be reported in the applicable report.

44. The name, address, telephone number and contact person of each analytical laboratory Respondent proposes to use must be specified in the applicable workplan.

45. All workplans required under this Consent Order shall include data quality objectives for each data collection activity to ensure that data of known and appropriate quality are obtained and that data are sufficient to support their intended use(s).

46. Respondent shall monitor to ensure that high quality data is obtained by its consultant or contract laboratories. Respondent shall ensure that laboratories used by

Respondent for analysis perform such analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846 Third Edition as amended by Update One, July 1992), or other methods deemed satisfactory to EPA. If methods other than EPA methods are to be used, Respondent shall specify and submit all such protocols for EPA approval in the work plan. EPA may reject any data that does not meet the requirements of the approved work plan or EPA analytical methods and may require resampling and additional analysis.

47. Respondent shall ensure that laboratories it uses for analyses participate in a QA/QC program equivalent to that which EPA follows. EPA may conduct a performance and QA/QC audit of each laboratory chosen by Respondent before, during, or after sample analyses. Upon request by EPA, Respondent shall have its laboratory perform analyses of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies in a laboratory's performance or QA/QC, resampling and additional analysis may be required.

XII. PROJECT COORDINATORS

48. EPA hereby designates as its Project Coordinator:

Conor Neal
Remediation and Reuse Branch
Land and Chemicals Division (LU-9J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

49. Within ten (10) calendar days of Respondent's receipt of this Consent Order, Respondent shall designate a Project Coordinator and submit the designated Project Coordinator's name, address, and telephone number in writing to EPA.

50. Each Project Coordinator shall, on behalf of the party that designated that Project Coordinator, oversee this Consent Order's implementation and function as the principal project contact.

51. Respondent shall provide EPA with a written notice of any change in its Project Coordinator. Such notice shall be provided at least seven (7) calendar days prior to the change in Project Coordinator.

XIII. THREATS TO PUBLIC HEALTH OR THE ENVIRONMENT

52. If EPA's Project Coordinator determines that activities in compliance or noncompliance with this Consent Order have caused or may cause a release of hazardous waste or waste constituents, or a threat to the public health or to the environment, EPA may require that

Respondent stop further implementation of this Consent Order for such a period of time as may be needed to abate any such release or threat and/or undertake any action which EPA determines is necessary to abate such release or threat; and may require Respondent to resume implementation of this Consent Order.

XIV. SAMPLING AND DOCUMENT AVAILABILITY

53. The Respondent shall submit to EPA upon request, the results of all sampling and/or tests or other data Respondent generates, or is generated on its behalf, in implementing this Consent Order.

54. Respondent shall notify EPA, in writing, at least fourteen (14) calendar days in advance of engaging in any field activities at the facility conducted pursuant to this Consent Order. At the request of EPA, Respondent shall provide or allow EPA or its authorized representatives to take split and/or duplicate samples of all samples collected by Respondent pursuant to this Consent Order. Similarly, at the request of Respondent, EPA will allow Respondent or its authorized representatives to take split and/or duplicate samples of any samples collected by EPA under this Consent Order, provided that such sampling shall not delay EPA's proposed sampling activities. Upon request, Respondent shall submit to EPA the results of all sampling and/or tests or other data generated by, or on behalf of, the Respondent pursuant to this Order. Nothing in this Consent Order shall limit or otherwise affect EPA's authority to collect samples pursuant to applicable law, including, but not limited to, RCRA and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*

XV. ACCESS

55. Respondent shall provide access at all reasonable times to the facility, and to all records and documentation relating to conditions at the facility and the activities conducted pursuant to this Consent Order, to EPA and its employees, contractors, agents, consultants, and representatives. These individuals shall be permitted to move freely at the facility in order to conduct activities that EPA determines to be necessary.

56. To the extent this Consent Order, or any approved work plans prepared pursuant hereto, require activities that must be done on property that Respondent neither owns nor controls, Respondent will use its best efforts to obtain site access agreements in a timely manner from the present owners of such property. "Best efforts" as used in this paragraph shall include the payment of reasonable compensation in consideration of granting access. Respondent shall ensure that EPA's Project Coordinator has a copy of any access agreements.

57. Nothing in this Consent Order limits or otherwise affects EPA's right of access and entry pursuant to applicable law, including RCRA and CERCLA.

58. Respondent shall notify EPA in writing at least ten (10) calendar days before engaging in any field activities, including but not limited to sampling, well-drilling, and installation of equipment.

XVI. RECORD PRESERVATION

59. Respondent shall retain, during this Consent Order's pendency and for a minimum of five (5) years after its termination, a copy of all data, records, and documents now in its possession or control, or in the possession or control of its contractors, subcontractors, representatives, or which come into the possession or control of the Respondent, its contractors, subcontractors, or representatives, which relate in any way to this Consent Order. Respondent shall notify EPA, in writing, at least ninety (90) days in advance of the destruction of any such records, and shall provide EPA with the opportunity to take possession of any such records. Such written notification shall reference the caption, docket number and date of issuance of this Consent Order and shall be addressed to:

Director
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

In addition, Respondent shall provide data, records and documents retained under this Section at any time before the expiration of the five year period at EPA's written request.

XVII. INFORMATION SUBMITTED TO EPA

60. Any information that Respondent is required to provide or maintain pursuant to this Consent Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

61. Respondent may assert a business confidentiality claim in the manner described in 40 CFR § 2.203(b) covering all or part of any information submitted to EPA pursuant to this Consent Order. Respondent shall substantiate any assertion of confidentiality when the assertion is made in accordance with 40 CFR § 2.204(e)(4). EPA shall disclose information submitted for which Respondent has asserted a claim of confidentiality as specified above only to the extent and manner 40 CFR Part 2, Subpart B permits. If no such confidentiality claim accompanies the information when it is submitted to EPA, EPA may make it available to the public without further notice to the Respondent.

62. In the event that Respondent wishes to assert a privilege with regard to any document which EPA seeks to inspect or copy pursuant to this Consent Order, Respondent shall identify the document, the privilege claimed and the basis therefor in writing. For the purposes

of this Consent Order, privileged documents are those documents exempt from discovery from the United States in litigation under the Federal Rules of Civil Procedure and/or any applicable case law. EPA may dispute any such claim of privilege pursuant to the dispute resolution provisions set forth in Section XIX., below.

XVIII. DELAY IN PERFORMANCE/STIPULATED PENALTIES

63. Unless there has been a written modification of a compliance date by EPA, or excusable delay as defined below in Section XX., Force Majeure, in the event that Respondent fails to comply with any requirement set forth in this Consent Order, Respondent shall pay stipulated penalties, as set forth below, upon receipt of written demand by EPA.

64. Compliance by Respondent shall include commencement or completion, as deemed appropriate by EPA, of any activity, plan, study or report required by this Consent Order, and in the manner required by this Consent Order and within the specified time schedules in and approved under this Consent Order. Stipulated penalties shall accrue as follows:

For any failure to commence, perform or complete work as prescribed in this Consent Order: \$3,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter;

For any failure to submit any draft or final workplans, plans, or reports as required by this Consent Order: \$3,000 per day for one to seven days or part thereof of noncompliance, and \$5,000 per day for each day of noncompliance, or part thereof, thereafter; and

For any failure to submit other deliverables as required by this Consent Order: \$1,000 per day for one to seven days or part thereof of noncompliance, and \$2,000 per day for each day of noncompliance, or part thereof, thereafter.

All stipulated penalties shall begin to accrue the first day that a violation occurs, or the first day after the date that complete performance is due, and shall continue to accrue through the final day of or correction of the violation. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Order.

65. All stipulated penalties owed to EPA under this section shall be due within thirty (30) calendar days of receipt of a demand for payment, unless Respondent invokes the dispute resolution procedures under Section XIX., below. Such demand for payment shall describe the noncompliance and shall indicate the amount of stipulated penalties due.

66. All stipulated penalty payments may be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be remitted to:

U.S. Department of the Treasury

Attention: U.S. EPA Region 5, Office of the Comptroller
P.O. Box 70753
Chicago, Illinois 60673

All payments shall reference the Respondent's name and address, and the EPA Docket Number of this Consent Order. Copies of the transmittal of payment shall be sent simultaneously to the EPA Project Coordinator and the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

In the alternative, payment may be made by wire transfer using the following instructions:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
SWIFT address FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message is
"D68010727 Environmental Protection Agency"

And placing, in the comment or description field of the electronic funds transfer, "In re REM Electric, Inc." and the docket number of this Consent Order.

Respondent shall forward evidence of wire transfer to EPA, within five (5) days of payment, to:

Tom M. Williams
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Office of Regional Counsel (C-14J)
77 West Jackson Boulevard
Chicago, Illinois 60604

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

67. Respondent may dispute EPA's demand for payment of stipulated penalties for any alleged violation of this Consent Order by invoking the dispute resolution procedures below under Section XIX., Dispute Resolution. Stipulated penalties shall continue to accrue, but are not required to be paid, for any alleged noncompliance which is the subject of dispute resolution during the period of such dispute resolution. To the extent that Respondent does not prevail upon resolution of the dispute, Respondent shall remit to EPA within twenty-one (21) calendar

days of receipt of EPA's written decision as to said dispute, any outstanding penalty payment in the manner described above in paragraph 66 of this Section.

68. Neither the filing of a petition to resolve a dispute nor the payment of stipulated penalties shall alter in any way Respondent's obligation to comply with the requirements of this Consent Order.

69. The assessment of stipulated penalties set forth in this Section shall not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this Consent Order.

XIX. DISPUTE RESOLUTION

70. If a dispute arises under this Consent Order, the procedures of this Section shall apply. The Parties shall make reasonable efforts to informally resolve disputes at the Project Coordinator or immediate supervisor level.

71. If Respondent disagrees, in whole or in part, with any EPA disapproval, modification or other decision or directive made by EPA pursuant to this Consent Order, Respondent shall notify EPA in writing of its objections, and the basis therefor, within fourteen (14) calendar days of receipt of EPA's disapproval, decision or directive. Such notice shall set forth the specific points of the dispute, the position which Respondent asserts should be adopted as consistent with the requirements of this Consent Order, the basis for Respondent's position, and any matters which it considers necessary for EPA's determination. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection, during which time representatives of EPA and Respondent may confer in person or by telephone to resolve any disagreement. If an agreement is reached, the resolution shall be written and signed by an authorized representative of each party. In the event that resolution is not reached within the twenty-eight (28) calendar day period, EPA will furnish to Respondent, in writing, its decision on the pending dispute. Said written decision shall state the basis and rationale for the decision.

72. Except as provided in paragraphs 70 and 71 above, the existence of a dispute, as defined in this Section, and EPA's consideration of matters placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this Consent Order during the pendency of the dispute resolution process.

73. Notwithstanding any other provisions of this Consent Order, no action or decision by EPA pursuant to this Consent Order, shall constitute final agency action giving rise to any right to judicial review.

XX. FORCE MAJEURE

74. Respondent shall perform the requirements of this Consent Order in the manner and within the time limits set forth herein, unless the performance is prevented or delayed by events which constitute a *force majeure*. Respondent shall have the burden of proving such a *force majeure*. A *force majeure* is defined as any event arising from causes not reasonably foreseeable and beyond the control of Respondent, which cannot be overcome by due diligence and which delays or prevents performance in the manner or by a date required by this Consent Order. A *force majeure* does not include: increased costs of performance; changed economic circumstances; failure to obtain federal, State or local permits; reasonably foreseeable weather conditions; or weather conditions which could have been overcome by due diligence.

75. Respondent shall notify EPA, in writing, within ten (10) calendar days after it becomes or should have become aware of any event which Respondent claims constitutes a *force majeure*. Such notice shall estimate the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to prevent or minimize the delay, and an estimated time table for implementation of these measures. Failure to comply with the notice provision of this paragraph shall constitute a waiver of Respondent's right to assert a *force majeure* claim with respect to such event. If, in EPA's sole and unreviewable

discretion, EPA determines that the failure to give notice was not prejudicial to EPA's efforts to protect human health or the environment, Respondent's failure to give notice shall not constitute a waiver. In addition to the above notification requirements, Respondent shall undertake all reasonable actions to prevent or to minimize any delay in achieving compliance with any requirement of this Consent Order after it becomes or should have become aware of any event which may delay such compliance.

76. If EPA determines that the failure to comply or delay has been or will be caused by a *force majeure*, the time for performance of that requirement of this Consent Order may be extended, upon EPA approval, for a period equal to the delay resulting from such *force majeure*. This shall be accomplished through an amendment to this Consent Order pursuant to Section XXIV., Subsequent Modification of Order. Such an extension shall not alter the schedule for performance or completion of any other tasks required by this Consent Order, unless these tasks are unavoidably affected by the delay. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a *force majeure*, or if there is no agreement on the length of the extension, Respondent may invoke the dispute resolution procedures set forth in Section XIX., Dispute Resolution.

XXI. RESERVATION OF RIGHTS

77. EPA expressly reserves all rights and defenses that it may have, including the right both to disapprove of work performed by Respondent pursuant to this Consent Order, to

require that Respondent correct and/or re-perform any work disapproved by EPA, and to request that Respondent perform tasks in addition to those stated in the Scope(s) of Work, workplans, or in this Consent Order, consistent with the objectives of this Consent Order.

78. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including any which may pertain to Respondent's failure to comply with any of the requirements of this Consent Order. This Consent Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and/or authorities, civil or criminal, which EPA has under RCRA, CERCLA, the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Clean Air Act (CAA), or any other statutory, regulatory, or common law enforcement authority of the United States.

79. EPA reserves the right to perform any portion of the work required herein or any additional monitoring, sampling, analysis, or reporting it deems necessary to protect public health or welfare or the environment. EPA reserves the right to seek reimbursement from Respondent for costs incurred by the EPA in connection with any such actions, pursuant to any right it may have under applicable law.

80. EPA reserves whatever rights it may have under any environmental law or authority, or in equity, to seek to recover from Respondent any costs incurred by EPA in overseeing the implementation of this Consent Order.

XXII. OTHER APPLICABLE LAWS

81. All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws, regulations, permits, and ordinances.

82. Respondent's compliance with this Consent Order shall not relieve it of its obligations to comply with RCRA, or any other applicable federal, state, or local laws, regulations, permits, and ordinances.

83. This Consent Order is not and shall not be interpreted to be a permit, or as a ruling or a determination of any issue related to a permit, under federal, state or local law; nor shall this Consent Order in any way affect Respondent's obligation, if any, to secure such a permit; nor shall this Consent Order be interpreted in any way to affect or waive any of the conditions or requirements that may be imposed as conditions of such permit or of Respondent's right to appeal any conditions of such permit. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

XXIII. OTHER CLAIMS

84. Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action, demand, or defense in law or equity, against any person, firm, partnership, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous waste constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or migrating from the facility.

85. Neither the United States nor EPA shall be a party, or be held out as a party, to any contract involving Respondent and relating to activities at the facility and shall not be liable for an claim or cause of action arising from or on account of any act or omission of Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants enter into in carrying out activities pursuant to this Consent Order.

XXIV. SUBSEQUENT MODIFICATION OF ORDER

86. Except as provided in paragraph 88 of this Section, this Consent Order's provisions may be amended only by EPA and Respondent's mutual agreement. Any such amendment shall be in writing, shall be signed by an authorized representative of each party, shall have as its effective date the date on which EPA signs it, and shall be incorporated into this Consent Order. Any oral agreement between EPA and Respondent, the purpose of which is to modify this Consent Order to address exigent circumstances, and which EPA and Respondent subsequently ratify in writing, shall have as its effective date the date of such oral agreement.

87. EPA's Project Coordinator may modify, in writing, any schedule adopted pursuant to this Consent Order. Any reports, plans, specifications, schedules, other submissions and attachments required by this Consent Order are, upon EPA's written approval, incorporated into this Consent Order. Any noncompliance with such EPA-approved reports, plans, specifications, schedules, other submissions, and attachments shall be considered a violation of this Consent Order and shall subject Respondent to the stipulated penalty provisions included in Section XVIII., Delay in Performance/Stipulated Penalties.

88. Minor modifications in the studies, techniques, procedures, designs or schedules utilized in carrying out this Consent Order and necessary for the completion of the project may be made by the Project Coordinators' written agreement. Such modifications shall have as an effective date the date on which the EPA Project Coordinator signs the agreement.

89. No informal advice, guidance, suggestions, or comments EPA may give shall be construed to modify this Consent Order. Routine communications exchanged verbally, in person or by telephone, between the parties to facilitate the orderly conduct of work under this Consent Order shall not alter or waive any rights and/or obligations of the parties under this Consent Order.

XXV. SEVERABILITY

90. If any judicial or administrative authority holds any provision or authority of this Consent Order, or the application of this Consent Order to any party or circumstances, to be invalid, the application of such provisions to other Parties or circumstances and the remainder of the Consent Order shall not be affected thereby and shall remain in full force.

XXVI. TERMINATION AND SATISFACTION

91. Respondent may seek this Consent Order's termination by submitting to EPA a written document indicating Respondent's compliance with all this Consent Order's requirements, and the associated dates of approval correspondence from EPA. This Consent Order's requirements shall be deemed satisfied upon Respondent's and EPA's execution of an "Acknowledgment of Termination and Agreement for Record Preservation and Reservation of Rights" (Acknowledgment). The Acknowledgment shall specify that Respondent has demonstrated to EPA's satisfaction that this Consent Order, including any additional tasks determined by EPA to be required pursuant to this Consent Order, have been satisfactorily completed.

92. This Consent Order shall be deemed satisfied upon Respondent's receipt of written notice from EPA that Respondent has demonstrated to EPA's satisfaction that the Consent Order's requirements, including any additional tasks EPA determines are necessary, have been satisfactorily completed. This notice shall not, however, terminate Respondent's obligations to comply with any continuing obligations hereunder, including without limitation, Section XVI (Record Preservation), XXI (Reservation of Rights), XXII (Other Applicable Laws), and Section XXIII (Other Claims).

XXVII. SURVIVABILITY/INTEGRATION

93. In the event a permit or order is issued to the facility incorporating this Consent Order's requirements by reference, such requirements shall not terminate unless they are expressly replaced by requirements in the permit, or all provisions of this Consent Order have been fully complied with to EPA's Satisfaction in accordance with Section XXI, Reservation of Rights.

XXVIII. ATTORNEYS' FEES AND COSTS

94. Except as otherwise provided herein, Respondent shall bear its own costs and attorneys' fees.

XXIX. EFFECTIVE DATE/DATE OF ISSUANCE

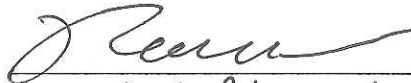
95. This Consent Order's effective date is the date the EPA Land and Chemicals Division Director signs it. The date of this Consent Order's issuance shall be the same date as the effective date.

IN THE MATTER OF REM ELECTRIC INC.
58-acre vacant property north of 2100 Tin Plate Place
Yorkville, OH 43971

IT IS SO AGREED AND ORDERED:


DATE: 7/20, 2016

BY:


Name, printed: Robert McEwen
Title: President
REM Electric, Inc.

DATE: 8/9/, 2016

BY:


Margaret M. Guerriero, Director
Land and Chemicals Division
U.S. Environmental Protection Agency
Region 5